



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 7209-98

4 June 1999

GYSGT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Gunnery Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has removed your contested fitness report for 1 November 1996 to 31 May 1997.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 June 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 5 October 1998, and the advisory opinion from the HQMC Manpower Equal Opportunity Branch, Manpower Plans and Policy Division (MPE), dated 9 November 1998, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion from MPE in concluding that your remaining contested adverse fitness report, for 23 June to 31 October 1996, should stand. They were unable to find that your noncommissioned officer in charge "was always harassing" you, noting that your reviewing officer stated that he "is one of the finest GySgts [gunnery sergeants] in this command." They were likewise unable to find that your reporting senior should have marked item 18 to show your report was based on less than "daily" observation, noting that observation need not be direct. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

7209-98

IN REPLY REFER TO:
1610
MMER/PERB
5 Oct 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
FORMER MARINE GUNNERY SERGEANT [REDACTED]
SSN [REDACTED]

Ref: (a) Mr. [REDACTED]'s DD Form 149 of 8 Jun 98
(b) MCO P1610.7D w/Ch 1
(c) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 30 September 1998 to consider Mr. [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960623 to 961031 (AR) -- Reference (b) applies
- b. Report B - 961101 to 970531 (EN) -- Reference (c) applies

2. The petitioner contends that both reports are a result of racial discrimination and insufficient observation by the Reporting Senior. With specific regard to Report A, the petitioner claims that the inclusive dates of the reporting period were initially incorrect, but were subsequently corrected by Major [REDACTED]. He also alleges that additional negative remarks were added after he signed the report on 9 November 1996. To support his appeal, the petitioner furnishes his own statement and copies of commendatory material.

3. In its proceedings, the PERB concluded that:

a. Report A is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

(1) The only error detected relative to the inclusive dates of the reporting period appear to be a typographical error in the beginning date in Item 3b. The report originally reflected a date of "950623" vice "960623." The oversight was obviously caught prior to submission of the report and was corrected. This certainly does not constitute any injustice.

(2) Since Item 19 (qualification for promotion) had been marked "no", a mandatory comment was required in the Section C

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SSN [REDACTED]

narrative. By the petitioner's own signature (to include the copy furnished with reference (a) which contains the incorrect date in item 3b), he acknowledged sighting all of the Section B marks. The only thing that Major [REDACTED] additional statement did was amplify the "no" in Item 19. It did not, as the petitioner claims, add additional adverse matter. Again, that does not constitute any error or injustice.

(3) Regardless of the petitioner's explanation into the delay in submitting a rebuttal, the Reviewing Officer clearly indicated that he was allowed more than sufficient time to submit a statement of rebuttal. Subparagraph 5003.3 of reference (b) allows five working days for such a statement. The petitioner was given over a month!

(4) Notwithstanding the petitioner's explanation into the events and circumstances that occurred during the period covered by Report A, the Board is not convinced or otherwise persuaded that the evaluation reflects anything other than a fair and accurate appraisal of his performance during the stated period. To this end, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

b. The removal of Report B is warranted and has been directed.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A should remain a part of [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



7209-98

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
5354
MPE
9 NOV 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: REVIEW OF BCNR APPLICATION IN THE CASE OF FORMER ~~CONFIDENTIAL~~
SERGEANT ~~CONFIDENTIAL~~

Ref: (a) BCNR Package dtd 27 Oct 98

1. As requested, the following opinion(s) are provided in the subject case.
2. A review was conducted for racial/discrimination based on the documents provided. In my opinion the information furnished by (Former) GySgt ~~Sotomayor~~ does not support his allegation of discrimination. Therefore, the allegations of discrimination are considered unsubstantiated.
3. For further assistance please contact ~~CONFIDENTIAL~~
DSN ~~CONFIDENTIAL~~ Comm. (703) ~~CONFIDENTIAL~~

~~CONFIDENTIAL~~
Head, Manpower
Equal Opportunity Branch
Manpower Plans and Policy
Division